

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1763**

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**Introduced by Assembly Member Davis**

February 17, 2012

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An act to amend Sections 781 and 923 of the Penal Code, relating to grand jury proceedings.

### LEGISLATIVE COUNSEL’S DIGEST

AB 1763, as amended, Davis. Grand jury proceedings: Attorney General: powers and duties.

Existing law authorizes the Attorney General to convene the grand jury to investigate and consider certain criminal matters. The Attorney General is authorized to take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do. Existing law authorizes the Attorney General to impanel a special grand jury to investigate, consider, or issue indictments for specified activities relating to Medi-Cal fraud.

This bill also would authorize the Attorney General to impanel a special statewide grand jury, as prescribed, for cases involving fraud

or theft that occur in more than one county and were conducted by a single defendant or multiple defendants acting in concert.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 781 of the Penal Code is amended to  
2 read:

3 781. Except as provided in Section 923, when a public offense  
4 is committed in part in one jurisdictional territory and in part in  
5 another, or the acts or effects thereof constituting or requisite to  
6 the consummation of the offense occur in two or more jurisdictional  
7 territories, the jurisdiction ~~of~~ *for* the offense is in any competent  
8 court within either jurisdictional territory.

9 SEC. 2. Section 923 of the Penal Code is amended to read:

10 923. (a) Whenever the Attorney General considers that the  
11 public interest requires, he or she may, with or without the  
12 concurrence of the district attorney, direct the grand jury to convene  
13 for the investigation and consideration of those matters of a  
14 criminal nature that he or she desires to submit to it. He or she may  
15 take full charge of the presentation of the matters to the grand jury,  
16 issue subpoenas, prepare indictments, and do all other things  
17 incident thereto to the same extent as the district attorney may do.

18 (b) Whenever the Attorney General considers that the public  
19 interest requires, he or she may, with or without the concurrence  
20 of the district attorney, petition the court to impanel a special grand  
21 jury to investigate, consider, or issue indictments for any of the  
22 activities subject to fine, imprisonment, or asset forfeiture under  
23 Section 14107 of the Welfare and Institutions Code. He or she  
24 may take full charge of the presentation of the matters to the grand  
25 jury, issue subpoenas, prepare indictments, and do all other things  
26 incident thereto to the same extent as the district attorney may do.  
27 If the evidence presented to the grand jury shows the commission  
28 of an offense or offenses for which ~~jurisdiction~~ *venue* would be in  
29 a county other than the county where the grand jury is impaneled,  
30 the Attorney General, with or without the concurrence of the  
31 district attorney in the county with jurisdiction over the offense or  
32 offenses, may petition the court to impanel a special grand jury in  
33 that county. Notwithstanding any other law, upon request of the

1 Attorney General, a grand jury convened by the Attorney General  
 2 pursuant to this subdivision may submit confidential information  
 3 obtained by that grand jury, including, but not limited to,  
 4 documents and testimony, to a second grand jury that has been  
 5 impaneled at the request of the Attorney General pursuant to this  
 6 subdivision in any other county where venue for an offense or  
 7 offenses shown by evidence presented to the first grand jury is  
 8 proper. All confidentiality provisions governing information,  
 9 testimony, and evidence presented to a grand jury shall be  
 10 applicable, except as expressly permitted by this subdivision. The  
 11 Attorney General shall inform the grand jury that transmits  
 12 confidential information and the grand jury that receives  
 13 confidential information of any exculpatory evidence, as required  
 14 by Section 939.71. The grand jury that transmits information to  
 15 another grand jury shall include the exculpatory evidence disclosed  
 16 by the Attorney General in the transmission of the confidential  
 17 information. The Attorney General shall inform both the grand  
 18 jury transmitting the confidential information and the grand jury  
 19 receiving that information of their duties under Section 939.7. A  
 20 special grand jury convened pursuant to this subdivision shall be  
 21 in addition to the other grand juries authorized by this chapter,  
 22 *including this section*, or Chapter 2 (commencing with Section  
 23 893).

24 (c) Whenever the Attorney General considers that the public  
 25 interest requires, he or she may, with or without the concurrence  
 26 of the district attorney, impanel a special statewide grand jury to  
 27 investigate, consider, or issue indictments in any matters in which  
 28 there are two or more activities, in which fraud or theft is a material  
 29 element, that have occurred in more than one county, and were  
 30 conducted either by a single defendant or multiple defendants  
 31 acting in concert.

32 (1) This special statewide grand jury may be impaneled in the  
 33 Counties of Fresno, Los Angeles, Sacramento, San Diego, or San  
 34 Francisco, at the Attorney General's discretion. When impaneling  
 35 a special statewide grand jury pursuant to this subdivision, the  
 36 Attorney General shall use an existing regularly impaneled *criminal*  
 37 grand jury *within the period of its regular impanelment* to serve  
 38 as the special statewide grand jury and make arrangements with  
 39 the grand jury coordinator in the applicable county, or with the  
 40 presiding judge or whoever is charged with scheduling the grand

1 jury hearings, in order to ensure orderly coordination and use of  
2 the grand jurors' time for both regular grand jury duties and special  
3 statewide grand jury duties. Whenever the Attorney General  
4 impanels a special statewide grand jury, the prosecuting attorney  
5 representing the Attorney General shall inform the special statewide  
6 grand jury at the outset of the case that the special statewide grand  
7 jury is acting as a special statewide grand jury with statewide  
8 jurisdiction.

9 (2) For special statewide grand juries impaneled pursuant to  
10 this subdivision, the Attorney General may issue subpoenas for  
11 documents and witnesses located anywhere in the state in order to  
12 obtain evidence to present to the special statewide grand jury. The  
13 special statewide grand jury may hear all evidence in the form of  
14 testimony or physical evidence presented to the special statewide  
15 grand jury, irrespective of the location of the witness or physical  
16 evidence prior to subpoena. The special statewide grand jury  
17 impaneled pursuant to this subdivision may indict a person or  
18 persons with charges for crimes that occurred in counties other  
19 than where the special statewide grand jury is impaneled. The  
20 indictment shall then be submitted to the appropriate court in any  
21 of the counties where *county in which* any of the charges could  
22 otherwise have been properly brought. The court where the  
23 indictment is filed under this subdivision shall have proper  
24 jurisdiction over all counts in the indictment.

25 (3) Notwithstanding Section 944, an indictment found by a  
26 special statewide grand jury *convened pursuant to this subdivision*  
27 and endorsed as a true bill by the special statewide grand jury  
28 foreperson, may be presented to the appropriate court, as set forth  
29 in paragraph (2), solely by the ~~prosecutor~~ *Attorney General* and  
30 within five court days of the endorsement of the indictment. For  
31 indictments presented to the court in this manner, the ~~prosecutor~~  
32 *Attorney General* shall also file with the court or court clerk, at  
33 the time of presenting the indictment, an affidavit signed by the  
34 special statewide grand jury foreperson attesting that all the jurors  
35 who voted on the indictment heard all of the evidence presented  
36 by the ~~prosecutor~~ *Attorney General*, and that a proper number of  
37 jurors voted for the indictment pursuant to Section 940. The  
38 Attorney General's Office shall be responsible for prosecuting an  
39 indictment produced by the special statewide grand jury.

1 (4) If a defendant makes a timely and successful challenge to  
2 the Attorney General's right to convene a special statewide grand  
3 jury by clearly demonstrating that the charges brought are not  
4 encompassed by this subdivision, the court shall dismiss the  
5 indictment without prejudice to the Attorney General, who may  
6 bring the same or other charges against the defendant at a later  
7 date by way of another special statewide grand jury, properly  
8 convened, or a regular grand jury, or by any other procedure  
9 available.

10 (5) The provisions of Section 939.71 shall apply to the special  
11 statewide grand jury.

12 (6) Unless otherwise set forth in this section, a law applying to  
13 a regular grand jury impaneled pursuant to Section 23 of Article  
14 I of the California Constitution shall apply to a special statewide  
15 grand jury unless the application of the law to a special statewide  
16 grand jury would substantially interfere with the execution of one  
17 or more of the provisions of this section. If there is substantial  
18 interference, the provision governing the special statewide grand  
19 jury will govern.

20 (d) Upon certification by the Attorney General, a statement of  
21 the costs directly related to the impanelment and activities of the  
22 grand jury pursuant to subdivisions (b) and (c) from the presiding  
23 judge of the superior court where the grand jury was impaneled  
24 shall be submitted for state reimbursement of the costs to the  
25 county or courts.